

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *dg* D.C.
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THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
WD OF TENN. MEMPHIS

LYNN MARIE POLINSKI,)	
)	
Plaintiff,)	
)	
vs.)	Civ. No. <u>04-2912-M1/P</u>
)	
SARA LEE CORPORATION/)	
JIMMY DEAN FOODS,)	
)	
Defendants.)	
)	

ORDER GRANTING DEFENDANT'S MOTION TO COMPEL AND DIRECTING
PLAINTIFF'S COUNSEL TO FILE SUPPLEMENTAL RESPONSE

Before the court is defendant Sara Lee Corporation's ("Sara Lee") Motion to Compel Discovery Responses, filed July 14, 2005 (dkt #15). In the motion, Sara Lee states that it mailed various discovery requests to plaintiff Lynn Polinski ("Polinski") on May 5, 2005, but that Polinski has yet to respond to these requests. The motion also details various communications between counsel for Sara Lee and Polinski regarding unsuccessful efforts by defense counsel to obtain these discovery requests from plaintiff's counsel, Mr. Bradley G. Kirk. Sara Lee asks that the court (1) order Polinski to respond to these outstanding discovery requests; (2) award attorney's fees to Sara Lee pursuant to Fed. R. Civ. P. 37; and (3) dismiss this case with prejudice.

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On August 1, 2005, Polinski filed her response to the motion. Counsel admits that "his responses to the Defendant's discovery requests in this matter have been extremely tardy," and that "Plaintiff's counsel must concede that the matter [sic] in which he has conducted himself has not been in compliance with the Federal Rules of Civil Procedure." Mr. Kirk, however, contends that his conduct "has not been intentional," and that he has been dealing with "personal health issues that have impacted his practice and the manner in which he has handled this case." There is no indication in the response when plaintiff intends to respond to Sara Lee's discovery requests.

Sara Lee's motion to compel is hereby GRANTED. Polinski is ordered to respond fully to all outstanding discovery requests within eleven (11) days from the date of this order. Given the untimeliness of the responses, and that Polinski has not demonstrated good cause to excuse the untimely responses, any objections that Polinski may have had to these discovery requests are deemed waived. See Fed. R. Civ. P. 33 and 34; Marx v. Kelly, Hart & Hallman, P.C., 929 F.2d 8, 12 (1st Cir. 1991); Pham v. Hartford Fire Ins. Co., 193 F.R.D. 659, 662 (D.Colo. 2000). The plaintiff is warned that failure to timely comply with this court's order, or to timely respond to discovery requests in the future, shall result in dismissal of the lawsuit with prejudice.

With regard to Sara Lee's request for sanctions, the court

directs counsel for Polinski within eleven (11) days from the date of this order to file a supplemental response describing in detail his reasons for not timely responding to discovery requests. If the supplemental response requires disclosure of sensitive personal information, such as counsel's health or medical information, the response may be filed under seal. The court will consider Sara Lee's request for attorney's fees and dismissal of the complaint after the supplemental response is filed.

IT IS SO ORDERED.



TU M. PHAM
UNITED STATES MAGISTRATE JUDGE

August 3, 2005
Date



Notice of Distribution

This notice confirms a copy of the document docketed as number 18 in case 2:04-CV-02912 was distributed by fax, mail, or direct printing on August 4, 2005 to the parties listed.

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Honorable Jon McCalla
US DISTRICT COURT